IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jalu Khan. Versus State of Rajasthan.

S.B. Criminal Revision No. 139/1992 against the judgment and order dated 02-6-1992 passed by the Additional Sessions Judge No.1, Churu in Criminal Appeal No. 24/1992.

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Date of Order: May 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pritam Solanki, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

This criminal revision under Section 397 Cr.P.C. is directed against the judgment and order dated 2-6-1992 passed by the Additional Sessions Judge, Churu (for short, "the Appellate Court" hereinafter) in Criminal Appeal No. 24/1992, whereby the Appellate Court dismissed the appeal filed by the petitioner against the judgment and order dated 12-2-1987 passed by the Judicial Magistrate, Taranagar (for short, "the trial Court" hereinafter) in Criminal Case No.14/1982, whereby the trial Court convicted the petitioner for the offences under Sections 279 and 304-A IPC and sentenced him to undergo six months' simple imprisonment for the offence under Sec. 304-A IPC and a fine of Rs. 500/- for the offence under Section 279

IPC. The petitioner, being aggrieved by his conviction and sentence, has filed the instant criminal revision.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the judgments and orders passed by the courts below. I have also carefully gone through the record of the trial Court.

It is contended by the learned counsel for the petitioner that the alleged three eye witnesses, viz. PW 1 Jai Singh, PW 2 Ram Swaroop and PW 3 Sheokaran, in their statements, admitted that the accident was not due to the fault of the present petitioner and it was the deceased himself who suddenly got down from the moving truck which was being slowing reversed, without informing the petitioner who was driving the truck or the other occupants of the truck. In these circumstances, according to the learned counsel for the petitioner, both the Courts below have failed to take note of this part of the prosecution witnesses and convicted the petitioner solely on the statements made by the witnesses in the examination-in-chief, without considering the evidence tested on cross-examination.

Learned Public Prosecutor supported the judgment and order impugned; however, submits that though the witnesses made statements in the examination-in-chief against the petitioner but in the cross-examination, they could not

withstand with their statement made in the examination-in-chief.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In the FIR lodged by PW 1 Jai Singh, it has been stated that he, along with PW 2 Ram Swaroop, PW 3 Sheokaran and deceased Har Dayal, boarded the truck driven by the petitioner. While the truck was being reversed, deceased Har Dayal got down from the truck, came under the rear wheels of the truck and suffered injuries on the legs. He succumbed to the injuries on the way to the hospital. The author of the FIR PW 1 Jai Singh made a statement before the Court and stated that the truck was loaded with 40 to 50 gunny bags. He, along with other persons, boarded the truck. Deceased also boarded the truck. At a particular point, the driver of the truck, i.e. the petitioner, stopped the truck. PW 2 Ram Swaroop and PW 3 Sheokaran got down from the truck. Deceased Har Dayal also got down from the truck. By the time, the truck driver reversed the truck and Har Dayal came under the rear wheels of the truck. In cross-examination, he categorically stated that for the said accident, there is no fault of the accused-petitioner. The truck was being slowly reversed by the petitioner. The deceased, without informing the driver of the truck, suddenly got down from the truck. The deceased even did not inform to the other occupants of the truck of his sudden getting down from the

truck.

PW 2 Ram Swaroop, the another eye witness and occupant of the truck, also made the similar statement that when the truck driver was reversing the truck, the rear wheels of the truck passed over the legs of the deceased. In the cross-examination, he stated that the deceased suddenly got down from the truck without informing the driver, even he did not inform to the other occupants of his sudden getting down from the truck.

PW 3 Sheokaran, the other eye witness and occupant of the very truck failed to identify the petitioner and did not support the prosecution case.

There is no other witness to the occurrence.

From the statements of PW 1 Jai Singh and PW 2 Ram Swaroop, it is more than clear that while the petitioner was slowly reversing the truck, the deceased, who was sitting in the body of the truck over the gunny bags, suddenly got down without informing either to the driver or the other occupants of the truck and in that process, his legs were run over by the rear wheels of the truck. The truck was stopped on the spot. By this evidence, it cannot be said that the petitioner was driving the truck rashly or negligently. It was the deceased himself who was negligent in suddenly getting down from the truck while it was in the process of being reversed. More particularly, the

witnesses to the occurrence categorically stated that the petitioner was not at fault for the said accident, on the contrary it was the deceased himself who suddenly got down from the moving truck without informing the driver or the other occupants of the truck. In the circumstances, therefore, the conviction of the petitioner for the offences under Section 279 and 304-A IPC cannot be sustained.

Consequently, the revision petition is allowed. The judgment and order of the trial Court, as affirmed by the Appellate Court vide judgment and order dated 2-6-1992, are set aside. The petitioner is acquitted of the offences under Sections 279 and 304-A IPC. He is on bail and his bail bonds are discharged.

(H.R. PANWAR), J.

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